CURRENT ISSUES IN ADMIRALTY

BY

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The matters I have selected for consideration concern two main areas. The first is the underpinning concept of the Admiralty jurisdiction, namely the nature and extent of the action *in rem*. The concept of an action *in rem*, although readily described, is replete with uncertainties in its practical applications and consequences. There have been two recent overseas cases examining the nature and extra-territorial reach of such an action. The second of these concerns some practical aspects which have arisen in the court process from arrest to sale of vessels which form the regular, if not daily, fare of Admiralty judges.

The issues covered are:

1. **The nature and extent of the action *in rem*.**
2. **Wrongful arrest and counter-security on arrest.**
3. **Arrest of surrogate ships.**
4. **Sale by the Admiralty Court.**
5. **Admiralty Marshal's fees and expenses.**
6. **The termination of demise charters.**

In dealing with these subjects I will touch in a couple of instances on some matters arising from the 1999 Arrest Convention done at Geneva on 12 March 1999, a copy of which is attached. This Convention will come into effect on the expiration of six months from the date on which ten States consent to be bound by the Convention.

1. Rights *in rem* – rejection of the personification theory

"A ship is the most living of inanimate things."
Oliver Wendell Holmes Jr, *The Common Law*, (1882) at 26.

An action *in rem* is an action against the ship itself. However, when the defendants to such an action (those interested in the ship) have entered an appearance, judgment may be enforced against them personally to the full extent of the damages claimed even if such damages exceed the value of the ship. After entry of appearance, the action proceeds as if it were an action *in personam* against those appearing but it does not cease to be an action *in rem*: per Gibbs J in *Caltex Oil (Australia) Pty Ltd v The Dredge "Willemstadt"* (1976) 136 CLR 529 at 538.

In the past 20 months there have been two important decisions on the nature and extent of the *in rem* jurisdiction of the admiralty courts. One is English, the other American.

In October 1997 the House of Lords re-examined the nature of an action *in rem*. The decision demonstrates that the analysis can have important practical consequences; at least in relation to the enforcement of foreign judgments. The case in question was *Republic of India v India Steamship Co Ltd (No. 2)* [1998] AC 878 ("*The Indian Grace*"). The leading speech was given by Lord Steyn, an experienced judge in Admiralty matters. Shortly stated, the question raised in the English courts was whether an *in rem* action, instituted in England by the Republic of India against the India Steamship Company, on a cause of action in respect of which a judgment had been given in its favour in an *in personam* proceedings in India, was barred by statute. The statutory provision in question was s 34 of the *Civil Jurisdiction and Judgments Act 1982* (UK) which provided:

> *"No proceeding may be brought by a person in England ...on a cause of action in respect of which a judgment has been given in his favour* ***in proceedings between the same parties*** *in a court of an overseas country..."(Emphasis added)*

The facts can be shortly stated. As the result of a fire on the ship "*Indian Grace*" the Indian Government lost a cargo of munitions. It notified the ship owners of two separate claims. The first was for total loss of the munitions cargo. The second was a smaller claim for loss of cargo jettisoned as a result of the fire. On 1 September 1988 the Indian Government issued *in personam* proceedings in India against the ship owners on the second smaller claim seeking damages for the cargo which had been jettisoned. The matter was heard in India in December 1989, and judgment was given for the rupee equivalent of £7,200 sterling. About four months before the hearing, that is on 25 August 1989, the Indian Government caused a writ *in rem* to be issued in the Admiralty Court in London claiming the value of loss or damages to cargo in the sum of SwKr 27,104,984. On 4 May 1999 the writ was served on the *"Indian Endurance"*, a sister ship of the *"Indian Grace"*, security was provided and the vessel released. No arrest was made, but an undertaking was given to pay the amount of the claim if proved and the "*Indian Endurance*" was allowed to sail.

The question raised was whether the English and the Indian proceedings were between the "same parties" for the purposes of s 34 quoted above.

At first instance, Clarke J decided that because the English action was an action *in rem,* though an action brought on the same cause of action, it was brought against a **different** party namely, **the ship** rather than the owners. This decision was reversed by the Court of Appeal and its decision, in turn, was affirmed by the House of Lords. After a detailed historical consideration, Lord Steyn concluded (at 913) that:

> *"The idea that a ship can be a defendant in legal proceedings was always a fiction. But before the Judicature Acts [1873-1875] this fiction helped to defend and enlarge Admiralty jurisdiction in the form of an action in rem. With the passing of the Judicature Acts that purpose was effectively spent. ... The fiction was discarded.*
>
> *It is now possible to say that for the purposes of section 34 an action in rem is an action against the owners from the moment that the Admiralty Court is seized with jurisdiction. The jurisdiction of the Admiralty Court is invoked by the service of a writ ... From that moment the owners are parties to the proceeding in rem.*

> *Subject to the plea for estoppel, section 34 is therefore a bar to the action in rem".*

One important factor in rejecting the personification approach that the ship was a separate entity, was the statutory extension of the *in rem* remedies cases to circumstances where there was no maritime lien.

In substance, the House accepted the procedural theory of the action *in rem,* which stripped away the form and revealed that in substance the owners were the real parties to the action *in rem.* Lord Steyn adopted as correct the observation in *The Deichland* [1990] 1 QB 361 at 389 ff in relation to an action *in rem* that:

> *"In reality, distinguished from formal aspects, the instant action is ... as much a suit against Deich [the owner of the ship] as would be an action in personam against it founded on the same complaint.*"

That case also concerned the 1982 Act. In addition, reference was made to the decision of the European Court of Justice to the same effect in *The "Maciej Rataj"* [1995] 1 Lloyd's Rep 302. Interestingly, Lord Steyn observed that the personification theory was traditionally more sympathetically regarded by Judges who had been steeped in Admiralty history with its civilian roots rather than by judges trained in the common law. The latter were described by him ([1998] AC at 908) as taking "the **robust view** that a ship is an inanimate thing, incapable of making contracts and committing torts, and devoid of legal personality" (emphasis added). The word "robust" in this context is used in the sense of "substantive" or "realistic".

The decision in *The "Indian Grace"* has met with a mixed reception. It has been criticised by Nigel Teare QC in "The Admiralty Action *In Rem* and the House of Lords" [1998] LMC LQ 33 who expressed what he describes as a "forlorn hope" that it should be regarded solely as a decision in the ambit of s 34. On the other hand, Mr F D Rose in the same volume (at 27) sees the decision, somewhat differently, as employing "a sensible and purposive approach to statutory construction."

The outcome of the case was that the action *in rem* which was sought to be brought in the UK was barred by s 34 of the Act as a consequence of the *in personam* judgment obtained in India because the parties were the same.

In rem jurisdiction – the "Titanic" Salvage case

Apart from being a "celluloid sensation", the "Titanic" has given rise to some fascinating litigation.

Recently, the US Court of Appeals for the Fourth Circuit examined the nature and geographic extent of the *in rem* jurisdiction in *R.M.S Titanic Inc v Haver; Deep Ocean Expeditions and Ors* (unreported, 28 April 1999).

The appeal concerned the jurisdiction of a United States court to decide claims based on salvage operations in international waters.

The RMS "Titanic" sank on 15 April 1912 in international waters.

In 1985 the wreck was discovered by a French team at the bottom of the North Atlantic, approximately 400 miles off the coast of Newfoundlands in 12,500 feet of water. A long way from Virginia. Salvage efforts began two years later. In 1994, the district court of the Eastern District of Virginia, exercising what is described as its "constructive *in rem* jurisdiction" over the wreck and the wreck site of the Titanic, awarded exclusive salvage rights as well as ownership of recovered artifacts to RMS Titanic Inc ("RMST"), a Florida corporation. The present litigation arose when an injunction was issued by the district court, which on 23 June 1998 was personalised and enforced against Mr Haver, an Arizona resident, Deep Ocean Expeditions ("DOE"), a British Virgin Islands corporation, and others. This injunction restrained interference with the rights of RMST, as salvor in possession of the wreck and wreck site of the Titanic, to exclusively "exploit" the wreck and the wreck site. The wreck site, which was the subject of the injunction, was a rectangular zone in the North Atlantic comprising an area of 168 square miles. The injunction was in far-reaching terms and included restraining the making of any image, video or photograph of the

wreck or wreck site or entering the wreck site with the intention of performing any of those acts.

In the northern Spring of 1998, DOE had begun to market an expedition known as "Operation Titanic", planned for August 1998, that would allow members of the public to visit the wreck. This involved descent to the wreck in a Russian deep sea submersible. The respondent, Mr Haver, had signed on and paid an amount of $32,500 for this privilege.

When RMST learned that DOE's proposal to market visits to the site would result in persons viewing and photographing the wreck it sought a preliminary injunction against DOE. Haver commenced a separate action against RMST seeking a declaratory judgment that he had a right to enter the wreck site to observe, make videos and to photograph the wreck. RMST filed a counter claim in Havers's action requesting a preliminary injunction to prohibit him from visiting the site. Haver challenged the Virginia district court's jurisdiction over the wreck and the wreck site of the Titanic as well as the court's personal jurisdiction over him. On 23 June 1998, the district court dismissed the jurisdictional challenge and held that it had both *in rem* jurisdiction over the salvage operations and the site, and *in personam* jurisdiction over Haver. The court issued an injunction against DOE, Haver and "anyone else having notice" until further order. (The report of the District Judge, Clarke J, can be found 9 F Supp. 2d 624).

The Court of Appeals undertook a detailed examination of the nature and extent of *in rem* rights, and began its consideration with some basic propositions that included the following:

1. Actions *in rem* are prosecuted to enforce a right to things whereas actions *in personam* are those in which an individual is charged personally. Because *in rem* actions adjudicate rights in and to specific property **before the court**, judgments *in rem* operate to bind all persons claiming against that property. It is this dominion over the vessel which both gives the court its jurisdiction and confers validity on its orders.

2. Judgments *in rem* affect **only** the **property before the court** and have no *in personam* significance other then to foreclose any person from later seeking rights **in the property** subject to the *in rem* action. *In personam* actions, in contrast, adjudicate rights and obligations of individual persons or entities and due process precludes courts from adjudicating *in personam* rights and obligations of persons in the absence of personal jurisdiction.

3. Injunctive relief ordered in an *in rem* action would be meaningless because things or property cannot be enjoined to do anything. This reflects the procedural view. However, in the present case, the court had jurisdiction *in personam* over Haver by the commencement of his own *in personam* action against RMST.

4. In the United States, the exercise of Admiralty jurisdiction has never been limited to maritime cases arising solely in US territorial waters. Traditionally, maritime cases arising from incidents on the high seas anywhere in the world have been brought in US courts of admiralty subject only to a discretionary exercise of the doctrine of *forum non conveniens.* Recognition of *in rem* jurisdiction does not, of course, imply that US courts in admiralty have the power to command that any person or any ship come before a United States court sitting in admiralty.

5. A salvor in providing a salvage service acts on behalf of the owner in saving the owner's property even though the owner may have made no such request and had no knowledge of the need. The law of salvage **presumes** that the owner desires the salvage service, and it is the assurance of reward that provides the inducement to seamen and others to engage in such undertakings to save property. Upon rendering salvage services, a salvor obtains a lien on the salvaged property by operation of law to secure payment of compensation and award due from the property owner. This lien attaches to the property to the exclusion of all others, including the property's true owner, and to facilitate the enforcement of the lien, the salvor enjoys a possessory interest in the property.

6. The *in rem* action is the most common process for enforcing a claim for salvage service and it depends on the court having jurisdiction over the *res* which is the property named as defendant. Only if the court has **exclusive** custody and control over the property does it have jurisdiction over the property to be able to adjudicate rights in it binding against the world. Consequently, **to exercise *in rem* jurisdiction over a ship or its cargo, the ship or cargo must be within the territory** in which the ***in rem* complaint is filed.** The sovereign limits of a nation are defined by the territorial boundaries within which it exercises supreme and exclusive power. In short, because the exercise of *in rem* jurisdiction depends on the court's exercise of exclusive custody and control over the *res*, the limits of *in rem* jurisdiction are defined by the effective limits of sovereignty itself.

The Court of Appeals partly reversed the primary judge. It considered that RMST obtained an "inchoate" lien both in the wreck and in the artifacts from the wreck which permitted it to enforce its claim for compensation and reward. Such a lien confers the right to exclusive possession, not only of artifacts removed from the wreck of the Titanic but also of the wreck itself, such that no other person is entitled lawfully to intrude as long as salvage operations continue.

However, the question for consideration by the Court of Appeals in essence was how, if at all, could the US court in admiralty enforce salvage rights with respect to property that was not within its territorial jurisdiction, nor indeed within the jurisdiction of any admiralty court?

The reasoning proceeded along the following lines.

When the ship is outside the jurisdiction of the US court, the court cannot exercise *in rem* jurisdiction over it in the "traditional" sense. However, the *jus gentium* (law of nations) authorises the admiralty court to exercise a **non-exclusive *in rem* jurisdiction** over the wreck. This is described as a "constructive" *in rem* jurisdiction. The district court had the necessary jurisdiction to **declare** salvage rights to the wreck which were effective as against the world. The ultimate resolution of

competing claims can only occur at such time as property removed from the wreck is brought within the jurisdiction of an admiralty court whereupon that court will have exclusive *in rem* jurisdiction over the property, or in circumstances when the persons involved in the dispute are before the court *in personam*. If for example, artifacts from the Titanic are brought within the jurisdiction of a court, then the court will have exclusive *in rem* jurisdiction to define and declare the rights to that property and such a declaration will be binding against the world.

The judgment thus distinguishes what it called "imperfect" or "inchoate" *in rem* jurisdiction, which gives the court jurisdiction but falls short giving of giving the court **exclusive** jurisdiction. This "constructive" *in rem* jurisdiction represents a shared jurisdiction with other nations when enforcing the *jus gentium*. Through this mechanism, it is said, internationally recognised rights may be legally declared but not finally enforced. The final enforcement requires the additional step of bringing the property (the *res*) or persons before the admiralty court in the country under consideration. This power to enforce decisions traditionally lies at the centre of the exercise of judicial power.

The Court of Appeals concluded that the district court was correct in declaring that RMST had salvage rights in the wreck of the Titanic and that those rights included the right exclusively to possess the wreck for purposes of enforcing the maritime lien which RMST obtained as a matter of law. It also found that the district court acted properly in entering an injunction against persons over whom it had **personal** jurisdiction, prohibiting them from interfering with the salvage efforts pursued by RMST. The Court of Appeals then added it believed that these aspects of the district court's declaration and injunction would be recognised by all maritime nations and enforced by their courts.

In relation to the extent of the concept of "salvage rights", the Court of Appeals, reversing the district court, decided that they did not cover the right to exclude others from visiting and observing and photographing the wreck because salvage rights did not extend to exploitation of the wreck in a general sense. The underlying policy of salvage law, it was emphasised, was to encourage voluntary assistance to ships and cargo in distress. Salvage is useful to owners only when it is

directed to the specific property to be salvaged. The district court was in error in extending the law of salvage so as to vest in RMST exclusive rights to visiting, viewing and photographing the wreck and wreck site.

As to the geographic boundaries of the salvage operations, the district court's 1996 injunction prohibited anyone entering within a 10 mile radius of the wreck site to search, survey or obtain any image of the wreck. Such prohibition on entering within the 10 mile radius of the wreck for the purpose of search and survey was not justified by the law of salvage nor justifiable under the law of free navigation on the high seas. However, the court could enforce salvage rights by prohibiting **a party over whom it had personal jurisdiction** from conducting salvage operations or otherwise interfering with the first salvor's exclusive right to salvage the wreck.

The case both factually and legally is a useful reminder as to the extent to which the nature and operation of *in rem* rights remain unsettled, especially in circumstances where the jurisdictions of national courts interact within the broad general principles of international law affecting maritime rights.

2. Wrongful Arrest

Where a vessel is wrongfully arrested, s 34 of the *Admiralty Act 1988* (Cth) ("the Admiralty Act") provides that damages can be awarded by the court against a party who **unreasonably and without good cause** either demands excessive security in relation to the proceeding, or obtains the arrest of a ship or other property, or fails to give a consent required under the Act for release of the ship or property.

Under the pre-1988 law applicable in Australia, and under the current law applicable in other common law jurisdictions, damages for wrongful arrest was only recoverable where there was bad faith, malice or gross negligence of the offending party. This general common law rule of wrongful arrest was recently applied by the Supreme Court of Canada in *Armada Lines Ltd v Chaleur Fertilizers Ltd* (1997) 148 DLR (4^{th}) 217. In that case the court, reversing the decision of the Federal Court of Appeal, applied the ancient rule governing circumstances when a party can claim

damage for wrongful arrest. This rule was expounded one hundred and forty years ago in *The "Evangelismos"* (1858) 12 Moo PC 352, 14 ER 945. In the Canadian judgment the court referred to the fact that, apparently alone among common law jurisdictions, Australia has departed from the rule by enacting s 34. The Canadian Supreme Court expressed the view that it was not possible for the longstanding rule to be amended by the court in Canada but that it called for legislation such as that which had been passed in Australia.

A similar conclusion to that reached in the Canadian *Armada* decision was reached by the English High Court by Coleman J in *The "Kommunar" (No 3)* [1997] 1 Lloyd's Rep 22. The subject was examined in some detail by Paul Michell, a Toronto attorney, in *Damages for Wrongful Maritime Arrest* (1998) 77 Can Bar Review 478, who at p 491 concluded:

> "*Arrest of a ship or cargo is a powerful weapon in a plaintiff's armoury. As the law presently stands, it is a weapon which plaintiffs may invoke with little regard for the damage it may cause. Only rarely are plaintiffs held liable for damages under the strict threshold prescribed by* The Evangelismos. *Consequently, defendants bear almost all of the risk of the plaintiff's decision to initiate a maritime arrest. It might be thought that even if it is conceded that having to show malice or gross negligence on the part of the plaintiff is too extreme a standard, the adoption of an "unreasonableness" standard would be a preferable middle ground. On such an approach, damages would be available only where it was demonstrated that the arresting party had acted unreasonably. Yet an unreasonableness standard, though obviously lower than the current standard, would commit courts to an expensive and drawn-out inquiry into the plaintiff's motives in initiating the arrest.* ***The undertaking in damages requirement, and the imposition of liability upon plaintiffs who are unsuccessful at trial, regardless of their motives or the reasonableness of their actions, represent a clearer rule and would achieve a more appropriate balance*** *between the interests of plaintiffs and defendants in maritime cases." (Emphasis added, footnotes excluded)*

Although the constraints on a successful claim under s 34 of the Australian Act are considerably less restrictive than under the prevailing common law, there has been a noticeable absence of claims under the section. This is surprising because the concepts are not unduly difficult and Admiralty cases are usually hard fought. A successful claimant under the section must show, of course, that it has suffered loss or damage as a **direct** result of the wrongful arrest, demand for security, or withholding of consent. Stuart Hetherington points out, in his *Annotated Admiralty Act* (1989),

that in South Africa a court can award damages where an excessive claim is made or excessive security is sought, or where a party **without good cause** obtains an arrest; so that our provisions are not unique. In some of the earlier English decisions on damages for wrongful arrest, a distinction is made between an **error in "judgment"** which may not entitle a party to an award of damages, and a **wrongful** arrest which could give rise to damages. The mere fact that proceedings are discontinued does not itself entitle the defendant to damages for wrongful arrest. In one of the old cases, *The Cathcart* (1867) LR 1 A & E 314, Dr Lushington ordered the plaintiff to pay damages where with full knowledge of the facts, the plaintiff arrested the vessel on the eve of its commencing a profitable voyage after a decision of a magistrate adverse to the plaintiff's claim. This was clearly an abuse of process.

Under Article 6(2) the *International Convention on the Arrest of Ships* done at Geneva on 12 March 1999 ("the 1999 Convention"), the courts of the state in which an arrest has been effected have jurisdiction to determine the extent of liability of the claimant for loss or damage caused by the arrest. The loss and damage includes, but is not limited to, loss and damage in consequence of the arrest having been wrongful or unjustified or by excessive security having been demanded and provided. A copy of the 1999 Convention is attached. It will enter into force six months after the date on which ten states have expressed their consent to be bound by it.

This provision differs from s 34, which depends for its operation on it being established that the arrest was both unreasonable and without good cause. Article 6(2) refers to either a **wrongful or** an **unjustified** arrest which is, of course, a different criterion. In addition, the Convention provision differs in that it is not limited to damages suffered "as a direct result" of the arrest, and as such it is much broader.

Under Article 6(2), even if an arrest is not wrongful (in the sense of being in bad faith or with gross negligence), damages can still be awarded if the arrest was **unjustified** (in the sense of erroneous). This latter expression could cover a situation where the arrest, although made lawfully, was made in circumstances where it was unnecessary because the owner was of undoubted financial resources with assets readily available to the claimant. There was considerable debate at the Geneva

Diplomatic Conference, at which the Convention was adopted, as to whether the expression "unjustified" should be retained because of the uncertainty and breadth of the expression but notwithstanding this the expression was retained in the final draft.

Counter-security on arrest

Under the Admiralty Act, an action *in rem* is commenced by writ in simple form. The only details required to be given under that form are short particulars of a claim to **identify** the cause of action. Under r 39 of the Admiralty Rules in force under the 1988 Act, the party to a proceeding commencing an action *in rem* may apply for an arrest warrant. Again, the application is in short form and requires the name of the ship, the port of registry, and a description of other property to be subject to arrest (Form 12); and it constitutes an undertaking to pay the fees and expenses of the Marshal (r 41). It must be supported by an affidavit which identifies the claim in respect of which the arrest is sought, and confirms that there has been a search of the Register of Caveats Against Arrest. Under r 40, the Registrar **may** then issue an arrest warrant but there are some specified grounds on which it shall not be issued. These relate to caveats, payments into court and filing of a bail bond. Some authorities indicate that although the word "may" usually involves a discretion on the part of the Registrar, there would normally be no ground for refusing to issue a warrant if the requirements of the Act and Rules had been met: cf *The "Varna"* [1993] 2 Lloyd's Rep 253 at 258; cf *The Vasso* [1984] 1 Lloyd's Rep 235. It can be appreciated from this that the process is extremely basic and simple.

Under Article 6(1) of the 1999 Convention, the court may **as a condition of the arrest** of a ship or of maintaining an arrest, impose on the claimant an obligation to provide **security** for any loss which may be incurred by the defendant, including loss and damages as may be incurred by the defendant in consequence of "the arrest having been wrongful or unjustified", or of "excessive security having been demanded and provided". The courts in the arresting state are given jurisdiction to determine the extent of the liability of the claimant for such loss or damage.

There was pressure at the Conference for the requirement of counter-security to be made mandatory and not discretionary. The suggestion was that the words

"shall impose" (rather than "may impose") should be adopted. However, the Conference preferred to make the power discretionary.

This counter-security provision as adopted would permit the court, either before or after arrest, to impose an obligation on the claimant to provide security as a condition of arrest. The difficulty which would arise at the time of the arrest, is to forecast with any accuracy the extent of the losses which may be suffered by the defendant as a result of the arrest. The provision in effect provides for not only an **undertaking** as to damages, which is not currently required under our Act, but it also requires **security** against losses direct or indirect which the defendant might suffer. This will be seen by claimants, at least in common law jurisdictions, as weakening the efficiency of the arrest process and it could impact on the attractiveness of the arrest machinery.

The requirement for security arises, of course, from the dissatisfaction of shipowners with the risks of unreasonable and irresponsible arrest. It involves a significant departure from the 1952 Convention, where the issue was avoided by providing that all questions of whether a claimant is liable in damages for the arrest of a ship or for the costs of bail, should be determined by the law of the contracting state in whose jurisdiction the arrest was made or applied for. From a practical point of view, the requirement to provide counter-security could lead to protracted initial litigation in a context where the eventual amount of damages is speculative. It seems to me that the present situation as embodied in s 34 is adequate as a deterrent against irresponsible arrest. The fact that s 34 is not availed of more often tends to indicate that once the substantive litigation has been completed the parties appear to have exhausted their enthusiasm for follow up litigation to obtain damages.

3. Arrest of Surrogate Ships

The substance of s 19 of the Admiralty Act is that a proceeding on a general maritime claim concerning a ship (Ship A) may be commenced as an action *in rem* against another ship (Ship B) if:

(a) a person who would be liable *in personam* on the claim was, when the cause of action arose, the owner or charterer of or in possession or control of Ship A; and

(b) that person was when the proceeding was commenced the owner of Ship B.

As Nigel Meeson points out in *Admiralty Jurisdiction and Practice* (1993) at 78 ff, the practice in the shipping business for many years has been to arrange for ships to be managed and controlled as a fleet by a single enterprise and to be registered in the names of separate companies whose only asset is one ship. Sometimes, these are registered in countries where identification of shareholders is not on the public record. Such one-ship companies operate to deprive prospective claimants of the benefit of the surrogate ship provisions. In common law jurisdictions, although the corporate veil can be lifted in some limited classes of cases of fraud or sham, there is no right to claim against a shareholder or the effective manager or controller of the company under prevailing company law: see *The Evpo Agnic* [1988] 1 WLR 1090 at 1096-7.

At the 1999 Diplomatic Conference, the United Kingdom delegation pressed for an amendment to the Draft to the effect that the arrest of a surrogate should be permissible where the surrogate was "controlled" by the person against whom the claim had arisen at the time when proceedings were commenced. The Comité Maritime Internationale ("CMI") in its submission proposed that the question of the piercing of the corporate veil should be permitted where that could be done under the law of the forum. The Conference, by large majority, rejected the United Kingdom proposal, so that the device of "one-ship companies" will continue to defeat the practical operation of the surrogate ship provisions, until the common law states, particularly, further develop the general law with respect to looking at the reality behind the corporate personality to the persons with the real control.

It is worth noting the recent decision of the High Court in *Laemthong International Lines Co Ltd v BPS Shipping Ltd* (1997) 149 ALR 675, where the High Court pointed out that historically some countries such as England only permitted the arrest of the "offending" ship, whereas many continental countries permitted, in

addition, the arrest of any other ship belonging to the same owner, and that a compromise was eventually reached between the two approaches with the consequence that only a single surrogate ship could be arrested. The extension of English law to surrogate ships was seen to be an advantage because, for example, in the case of a collision, the offending ship may have sunk or may not come to the jurisdiction so that there would be nothing to arrest. In the *Laemthong* case, when the cause of action arose Laemthong International Lines Co ("Laemthong") was the voyage charterer of the *Nyanza*, which was the offending ship. When the proceedings were commenced Laemthong owned the *Laemthong Pride*. The court decided that the proceeding was properly commenced as an action *in rem* against the *Laemthong Pride*. The court pointed out that although s 19 could operate where a general maritime claim against the offending ship could be commenced as an action *in rem*, that was not an essential requirement of s 19.

4. Sale by the Admiralty Court

An important question was recently considered by the Federal Court as to the interaction of the Marshal's power with respect to the sale of an arrested vehicle under the Admiralty Act, and the entitlements of statutory authorities under other legislation empowering detention and forfeiture of the same vessel. When an arrested ship is sold by the court it is of critical importance that an unencumbered and clear title can be obtained by a prospective purchaser.

In a recent Federal Court decision, *Readhead v Admiralty Marshal for Western Australia District Registry* (1998) 157 ALR 660, Ryan J had to consider whether the detention of a ship by a Fisheries officer under the *Fisheries Management Act 1991* (Cth) ("the Fisheries Act"), affected the power of the Federal Court to transfer a clear title freed from the entitlements of the Australian Fisheries Management Authority ("AFMA").

The question arose in this way. The ship *Aliza Glacial* was detained by a AFMA officer pursuant to s 84 of the Fisheries Act, which empowers an authorised officer to detain any boat that the officer has reasonable grounds to believe has been used in contravention of the Act. The fishing vessel had been detained by AFMA

because it was a foreign vessel, which did not have a licence for commercial fishing in the Australian Fishing Zone. This breach was an indictable offence punishable on conviction by fine. Section 106 of the Fisheries Act provides that where a court convicts a person of a relevant offence, the court may order the forfeiture of the boat used in the commission of the offence. No such order had been made in the *Readhead* case. At the time of arrest, the ship was berthed at Fremantle. The vessel had been apprehended on 17 October 1997. Complaints for the offences were filed in the Court of Petty Sessions on 19 November; and on 20 February 1998 the vessel was arrested. On 20 March 1998, the Federal Court made an order for sale of the vessel. As at 20 March there had been no conviction and no order had been made for forfeiture of the vessel.

The issue was whether a purchaser of the ship pursuant to the admiralty court's order for sale would obtain an unencumbered title, or whether the acquired title would be subject to the power of control and detention asserted by AFMA, and to forfeiture pursuant to an order of a Court of Petty Sessions.

The crux of AFMA's argument was that arrest by the Marshal could not affect antecedent possessory rights vested in the detaining party and could not curtail the exercise of law enforcement measures conferred by the Fisheries Act.

Ryan J, after an extensive review of the authorities, concluded (157 ALR at 672) that a sale by the Marshal pursuant to an order of the admiralty court conferred an unencumbered title good against the whole world.

In the course of his reasons for judgment, his Honour pointed out that there was a conflict in the English authorities as to the relationship between a statutory power of detention and the rights of a plaintiff under the Admiralty Act. His Honour referred to the judgment of Brandon J in *Corps v Owners of the Paddle Steamer "Queen of the South"* [1968] P 449. In that case Brandon J referring to the Port of London Authority said (at 458):

> *"I do not see why the interveners should not exercise their statutory right of detention even while the ship is under arrest provided that they do not*

interfere with the Marshal's custody, which it is not suggested that they have done..."

His Lordship went on to say (at 461):

"It is well established that, in an action in rem against the ship, the court has power to sell her free of both a repairer's common law possessory lien and the mortgagee's contractual or statutory right of sale. It does so on the basis that the rights of which the ship is freed by the sale, together with any priority over other rights to which they may be entitled, are transferred to, and preserved against, the proceeds of sale in court."

Brandon J, however, ultimately did not find it necessary to resolve the question because he exercised the court's power to authorise the Marshal to pay the rates owed to the Port Authority and to include that expenditure as part of the Marshal's expenses of sale.

Section 36 of the Admiralty Act provides that in a civil action where a ship is arrested, the detention is suspended for so long as the ship is under arrest. Subsection (5) provides that where a detained ship is sold by the admiralty court pursuant to an arrest, the claim in relation to which the ship was detained is payable in priority to any other claims against the ship other than the Marshal's claim.

Consideration was given to these provisions by Ryan J in *Readhead*. However, his Honour pointed out that they applied because the right of detention claimed by AFMA was in aid of forfeiture by way of penalty and was not a civil action.

The conclusion which his Honour reached after consideration of the authorities (at 676) was as follows:

"In these circumstances, I consider that the legislature intended to leave to the Court of Admiralty, in the exercise of its discretion, the adjustment of the competing rights of the authorised officer under the [Fisheries] Act on the one hand, and of the plaintiff in an action in rem and other persons interested in the resolution of that action on the other.

...

The conclusion which I have formed in considering the preliminary question strengthens the present applicants' claim to be heard as interveners when the court is exercising the discretion which, I consider, has been left to it by the

operation in conjunction of the Fisheries Management Act and the Admiralty Act."

His Honour added that the rights asserted by AFMA did not constitute a defect of title to the ship which a purchaser would acquire upon the sale of a ship ordered by the court.

The case is important because it emphasises the broad discretion of the court to resolve the competing interests of a statutory detaining authority and powers of the court in an arrest situation. The matter settled after his Honour's judgment. The case leaves outstanding some difficult questions such as the quantification of the potential claim by AFMA. This could depend to some extent on whether a conviction was likely to be obtained or whether an order for forfeiture would probably be made. In the particular circumstances I understand that the ship's officers who had been prosecuted had left the jurisdiction and there was therefore considerable uncertainty as to whether a conviction could be obtained and whether any order for forfeiture could be made. In this state of affairs these contingencies would have to be taken into account when assessing any claim against the fund by AFMA. If on the other hand a conviction had been obtained and an order for forfeiture had been made, then it may be that AFMA was entitled to the whole of the fund less the Marshal's expenses. These questions remain open for resolution on another occasion.

5. Marshal's expenses - undertakings

On an arrest, the ship and property arrested come under the custody of the Admiralty Marshal (r 47(1)) for the purpose of exercising the functions assigned under r 47(2) of the Federal Admiralty Rules. If the vessel is not released the Marshal retains this custody up to the time of transfer after sale. During that period the Marshal will in the ordinary course of events incur substantial costs and expenses. In addition, by virtue of the Admiralty Regulations, substantial fees may accrue to the Marshal for work done. The Marshal does not have possession of the ship in a legal sense.

The functions of the Marshal include, but are not limited to, removing and storing cargo that is under arrest; removing and storing cargo from a ship that is under arrest; removing, storing, or disposing of perishable goods under arrest; and moving the ship. The Marshal is also given responsibilities in relation to the valuation and sale of the vessel (Part X), and also with respect to the preservation, management or control of the ship or property under arrest (rule 50).

The role of the Marshal was discussed in some detail in a recent decision of the Federal Court in *Patrick Stevedores (No 2) Pty Ltd v MV Turakina* (1998) 154 ALR 514 at 517-519 .

The Admiralty Rules provide for undertakings to be given at various stages of the arrest, release and sale process as to the payment of the fees and expenses of the Marshal. These are required to be given by different parties and to a considerable extent they overlap. Some uncertainty can arise between the persons giving the undertakings as to who should meet any particular demand by the Marshal. In the final analysis, the Marshal has a discretion upon whom he makes a demand for a payment or interim payment and the rights of the parties will be determined upon distribution of funds in settlement of priorities.

The rules and procedures prescribed are predicated on the basis that the Marshal is entitled to receive all reasonable expenses and costs together with any statutory fees and expenses incurred by the Marshal.

In making an application for arrest, the prescribed Form provides for an undertaking by the applicant to pay the fees and expenses of the Marshal in complying with the application: see rule 39(1) and Form 12. Rule 41 of the Admiralty Rules provides that an application for an arrest warrant constitutes an undertaking to the court by an applicant who makes the application personally or, if the application is made by a solicitor on behalf of an applicant, the undertaking is imposed on the solicitor. The obligation is to pay the Marshal on demand an amount equal to the fees and expenses of the Marshal in relation to the arrest. Several matters need to be noted. First, the undertaking arises automatically by force of the rule upon the application being made. Second, there is no doubt the applicant's solicitor is

personally liable if the application is made by a solicitor. Third, the Marshal's fee, in relation to the arrest, can amount to very substantial sums. Solicitors clearly need to be prudent in covering themselves before making an application for arrest. This can raise real problems for a solicitor in the Admiralty jurisdiction who is instructed to arrest the vessel. Because of the large potential liability imposed, it is generally not advisable to arrest a vessel for a relatively small claim.

The words "in relation to the arrest" certainly cover the administrative costs and overheads of the Marshal and the appropriate fees in effecting the arrest, but a question may arise as to whether they are sufficiently wide to also cover all expenses incurred while the ship is under arrest. The extent of the undertaking has not been determined by any judicial decision so far as I am aware.

The undertaking given by the solicitor or the applicant, as the case may be, in relation to an arrest, could cover matters such as harbour dues, maintenance of the vessel whilst it is in custody, wages for essential crew, costs of moving the vessel to another harbour, berth or port and perhaps insurance of the vessel whilst in custody. The Marshal's functions and duties, as discussed earlier, are set out in r 47. However, the list of functions is not exhaustive. Rule 48 enables the Marshal to seek directions from the court and r 50 enables the court at any stage of the proceeding to make appropriate orders with respect to the preservation, management or control of the ship or other property that is under arrest in the proceedings. In giving such directions the court could make declarations as to whether the costs are to be treated as Marshal's fees and expenses.

Any person entitled to immediate possession of a ship or cargo not under arrest but in custody of the Marshall with arrested cargo or an arrested ship respectively, can request the Marshal to discharge the cargo from the ship (rule 49(1)). Rule 49(2)(b) requires an undertaking by the applicant to the Marshal to pay on demand fees and expenses of the Marshal in connection with the discharge. This is a more narrowly framed undertaking in that it is the applicant (not the solicitor) who must give the undertaking and the undertaking is limited to fees and expenses **in connection with the discharge**. The words "in connection with" are broad but the notion of discharge of cargo is much more limited than the notion of expenses in

relation to an arrest. In addition, the Marshal can require the applicants to provide an indemnity in respect of any claim arising from the discharge of the cargo (r 49(2)(c)). The prescribed form of application for the discharge (Form 17) provides for an undertaking to be given for the fees and expenses of the Marshal in complying with the application. The wording in the Form is different from that in the rule but probably nothing turns on this.

Rule 50 is mentioned earlier. The power conferred on the court to make appropriate orders with respect to preservation, management or control of a ship or other property under arrest in the proceeding is extremely broad. It would include a power to impose conditions as to who should bear the expense of complying with such orders.

When an application for release is made to the court, the prescribed form (Form 19) requires the applicant to undertake to pay the fees and expenses of the Marshal "in connection with the custody of the ship/property while under arrest". The broad wording of this undertaking and the use of the words "in connection with", have the effect that it may overlap with the primary undertaking given in the application for arrest which covers expenses in relation to the arrest. In contrast, where the application for release is made to the Registrar, the undertaking required by the prescribed form (Form 18) is limited to "the fees and expenses of the Marshal in complying with [the] application".

The Admiralty Marshal's fees and expenses are a first charge on the proceeds of sale and will be paid out in priority to any other claim: see *Patrick Stevedoring (No 2) Pty Ltd v The Proceeds of Sale of Vessel MV Skulptor Konenkov* (1997) 144 ALR 394 at 397-398 per Sheppard J. His Honour there sets out the overall framework and ranking of priorities with respect to claims on an arrested vessel which has been sold.

The practical result in the case of overlap of the undertakings is that the Marshal can call on any available undertaking to recover his costs and expenses in the names of the party or parties called upon, and this can be adjusted when the priorities of the claimants under the fund are settled.

Where an application is made to the court by a party at any time seeking an order that a ship should be valued and sold, such application of itself constitutes automatically an undertaking to the court to pay on demand to the Marshal an amount equal to the amount of the fees and expenses of the Marshal in complying with the order (r 69(1) and (4)). These expenses would include valuation, brokerage, commission, advertising fees together with the Marshal's fees.

There is provision for the Marshal to make interim demands from time to time for payment of fees and expenses. It is not necessary that the Marshal should wait until the sale of the vessel to recoup his expenses. After all the Marshal is not a financier.

There has been some concern expressed among practitioners as to the extent of the exposure of themselves and their clients to the costs and expenses of the Marshal as a result of the undertakings. Disobedience to any undertaking given to the court under the Rules can result in committal. There is, however, provision in r 72 for the Registrar of the court to tax the fees and expenses of the Marshal in connection with valuation and sale. Any person interested in the proceeds may appear before the Registrar on the taxation. This does not cover earlier stages in the process. However, under r 65 the court may, on application or of its own motion, require the taking of an account by the Registrar. The determination of the Registrar may include orders as to the costs of and incidental to the reference (r 67(2)).

The rules relating to the liability of persons for the Marshal's fees and expenses are uncertain and call for some amendment and clarification.

6. Demise Charters – termination

Another recent judgment of the Federal Court in *Patrick Stevedores (No 2) Pty Limited v MV "Turakina"* (1998) 154 ALR 667 ("*MV Turakina*"), points out one consequence of the distinction between a demise charter and a voyage or time charter in the context of termination or withdrawal for non-payment of hire.

The Court decided that in order to terminate a **sub-demise** charter a mere notification by the owner that the vessel was withdrawn from the charter was not sufficient to terminate a demise charter. It was held necessary that there should be an actual or constructive re-delivery of control and possession of the vessel in order to perfect the termination process. Alternatively, there could be a step or acknowledgment by the charterer or its agent to give effect to the re-delivery.

The law is well settled that in order to terminate a **time** or **voyage** charter communication of the decision to cancel or withdraw is sufficient. Such withdrawal operates without more to terminate the charter and there is no necessity for any further step such as re-delivery: see, for example, *The "Aegnoussiotis"* [1977] 1 Lloyd's Rep 268, and *Scrutton on Charterparties* (20th ed, 1996) at 355-356.

In the case of a demise charter the important difference is that it operates to deliver possession to the charterer: see *Laemthong* 149 ALR at 681. Therefore, once a vessel is withdrawn from the service of the demise charterer, an obligation may exist under the charter to re-deliver possession in order to perfect the termination. Of course if the charterer refuses to re-deliver when requested there will be breach of the charter party, and if such a breach is accepted, the charter will then be at an end. But where there is no accepted breach or other acknowledgment the demise charter remains in effect. In every case, however, it is of course essential to examine the terms of the charter party and they will be controlling.

In the case of *MV "Turakina"*, the vessel was arrested in Sydney on the application of Patrick Stevedores on the basis of a claim for stevedoring services. Before arrest the ship had been sub-demised from a sub-demisor (Deil) to South Pacific Shipping Limited (SPS). Deil, on the day before the arrest, sent a letter by fax to the SPS in New Zealand purporting to terminate the sub-demise charter with SPS for non-payment of hire. The letter was to the effect that Deil had no alternative but to terminate the charter party and take possession of the ship, and that termination was to have immediate effect. Deil, as disponent owner, also directed that the ship be re-delivered to the possession and control of the beneficial owners whose representative would make contact with the Master and attend to necessary aspects of re-delivery. On 19 February at 10.21 am, a resolution was passed in New Zealand for the

voluntary winding up of SPS. At 11.15 am, a copy of the letter of 18 February 1998 was served on the ship's Master. The writ for arrest was filed at 2.30 pm. The owner of the vessel applied for release from arrest on the ground that at the time the writ was filed the court had no jurisdiction because SPS was not a demise charterer of the ship because the charter had been terminated. Patricks submitted that at the date of the issuing of the writ, the court had jurisdiction because SPS remained the charterer until re-delivery. There was no submission made by the owner to the effect that there had been a repudiation. The Court decided that, under the "Barecon 89" charter, re-delivery was necessary, and that this was not affected by a notice of termination, nor by purported cancellation or withdrawal of the ship.

A similar conclusion on this point was reached in a related case in the High Court of New Zealand by Giles J in *Mobil Oil New Zealand v The Ship "Rangiora"* (14 July 1998 – Matters AD877 and 882), although the New Zealand case was argued on a broader basis than the Australian case. His Honour there held that there had been no act of actual or symbolic re-delivery. He concluded that the notice of termination cancelled control but did not effect re-delivery of possession. It was held that re-delivery was not effected until after the arrest when the liquidators of SPS formally acknowledged re-delivery on 20 February. His Honour considered that the demise charter was effectively brought to an end by the formal acknowledgment of re-delivery. His Honour had expert evidence as to the state of German law and on this aspect he concluded that under German law for a demise charter to be brought to an end physical re-delivery was required.

In both cases, the application for release was unsuccessful.

Sydney
13 September 1999

International Convention on Arrest of Ships, 1999

The States Parties to this Convention,
Recognizing the desirability of facilitating the harmonious and orderly development of world seaborne trade.
Convinced of the necessity for a legal instrument establishing international uniformity in the field of arrest of ships which takes account of recent developments in related fields,
Have agreed as follows:

Article 1
Definitions

For the purposes of this Convention:
1. "Maritime Claim" means a claim arising out of one or more of the following:
(a) loss or damage caused by the operation of the ship;
(b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
(c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
(d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);
(e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
(g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
(h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;
(i) general average;
(j) towage;
(k) pilotage;

Convention Internationale de 1999 sur la Saisie Conservatoire des Navires

Les États parties à la présente Convention,
Considérant qu'il est souhaitable de faciliter le développement harmonieux et ordonné du commerce maritime mondial,
Convaincus de la nécessité d'un instrument juridique établissant une uniformité internationale dans le domaine de la saisie conservatoire des navires, qui tienne compte de l'évolution récente dans les domaines connexes,
Sont convenus de ce qui suit :

Article premier
Définitions

Aux fins de la présente Convention :
1. Par "créance maritime", il faut entendre une créance découlant d'une ou plusieurs des causes suivantes:
a) pertes ou dommages causés par l'exploitation du navire;
b) mort ou lésions corporelles survenant, sur terre ou sur eau, en relation directe avec l'exploitation du navire;
c) opérations de sauvetage ou d'assistance ainsi que tout contrat de sauvetage ou d'assistance, y compris, le cas échéant, pour indemnité spéciale concernant des opérations de sauvetage ou d'assistance à l'égard d'un navire qui par lui-même ou par sa cargaison menaçait de causer des dommages à l'environnement;
d) dommages causés ou risquant d'être causés par le navire au milieu, au littoral ou à des intérêts connexes; mesures prises pour prévenir, réduire ou éliminer ces dommages; indemnisation de ces dommages; coût des mesures raisonnables de remise en état du milieu qui ont été effectivement prises ou qui le seront; pertes subies ou risquant d'être subies par des tiers en rapport avec ces dommages; et dommages, coûts ou pertes de nature similaire à ceux qui sont indiqués dans le présent alinéa d);
e) frais et dépenses relatifs au relèvement, à l'enlèvement, à la récupération, à la destruction ou à la neutralisation d'un navire coulé, naufragé, échoué ou abandonné, y compris tout ce qui se trouve ou se trouvait à bord de ce navire, et frais et dépenses relatifs à la conservation d'un navire abandonné et à l'entretien de son équipage;
f) tout contrat relatif à l'utilisation ou à la location du navire par affrètement ou autrement;
g) tout contrat relatif au transport de marchandises ou de passagers par le navire, par affrètement ou autrement;
h) pertes ou dommages subis par, ou en relation avec, les biens (y compris les bagages) transportés par le navire;
i) avarie commune;
j) remorquage;
k) pilotage;

(l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
(m) construction, reconstruction, repair, converting or equipping of the ship;
(n) port, canal, dock, harbour and other waterway dues and charges;
(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
(p) disbursements incurred on behalf of the ship or its owners;
(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
(s) any dispute as to ownership or possession of the ship;
(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;
(u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;
(v) any dispute arising out of a contract for the sale of the ship.

2. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.
3. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
4. "Claimant" means any person asserting a maritime claim.
5. "Court" means any competent judicial authority of a State.

Article 2
Powers of arrest

1. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.
2. A ship may only be arrested in respect of a maritime claim but in respect of no other claim.
3. A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be

l) marchandises, matériels, approvisionnement, soutes, équipements (y compris conteneurs) fournis ou services rendus au navire pour son exploitation, sa gestion, sa conservation ou son entretien;
m) construction, reconstruction, réparation, transformation ou équipement du navire;
n) droits et redevances de port, de canal, de bassin, de mouillage et d'autres voies navigables;
o) gages et autres sommes dus au capitaine, aux officiers et autres membres du personnel de bord, en vertu de leur engagement à bord du navire, y compris les frais de rapatriement et les cotisations d'assurance sociale payables pour leur compte;
p) paiements effectués pour le compte du navire ou de ses propriétaires;
q) primes d'assurance (y compris cotisations d'assurance mutuelle) en relation avec le navire, payables par le propriétaire du navire ou par l'affréteur en dévolution ou pour leur compte;
r) frais d'agence ou commissions de courtage ou autres en relation avec le navire, payables par le propriétaire du navire ou par l'affréteur en dévolution ou pour leur compte;
s) tout litige quant à la propriété ou à la possession du navire;
t) tout litige entre les copropriétaires du navire au sujet de l'exploitation ou des droits aux produits d'exploitation de ce navire;
u) hypothèque, "mortgage" ou droit de même nature sur le navire;
v) tout litige découlant d'un contrat de vente du navire.

2. Par "saisie", il faut entendre toute immobilisation ou restriction au départ d'un navire en vertu d'une décision judiciaire pour garantir une créance maritime, mais non la saisie d'un navire pour l'exécution d'un jugement ou d'un autre instrument exécutoire.
3. Par "personne", il faut entendre toute personne physique ou morale ou toute société de personnes, de droit public ou de droit privé, y compris un État et ses subdivisions politiques.
4. Par "créancier", il faut entendre toute personne alléguant une créance maritime.
5. Par "tribunal", il faut entendre toute autorité judiciaire compétente d'un État.

Article 2
Pouvoirs de saisie

1. Un navire ne peut être saisi, ou libéré de cette saisie, que par décision d'un tribunal de l'État partie dans lequel la saisie est pratiquée.
2. Un navire ne peut être saisi qu'en vertu d'une créance maritime, à l'exclusion de toute autre créance.
3. Un navire peut être saisi aux fins d'obtenir une sûreté, malgré l'existence, dans tout contrat considéré, d'une clause attributive de compétence judiciaire ou arbitrale, ou de toute autre disposition, prévoyant de soumettre la créance maritime à l'origine de la saisie à

adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

4. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

Article 3
Exercise of right of arrest

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or

(b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or

(c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or

(d) the claim relates to the ownership or possession of the ship; or

(e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:

(a) owner of the ship in respect of which the maritime claim arose; or

(b) demise charterer, time charterer or voyage charterer of that ship.

This provision does not apply to claims in respect of ownership or possession of a ship.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

Article 4
Release from arrest

1. A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has

l'examen au fond du tribunal d'un État autre que celui dans lequel la saisie est pratiquée, ou d'un tribunal arbitral, ou d'une clause prévoyant l'application de la loi d'un autre État à ce contrat.

4. Sous réserve des dispositions de la présente Convention, la procédure relative à la saisie d'un navire ou à sa mainlevée est régie par la loi de l'État dans lequel la saisie a été pratiquée ou demandée.

Article 3
Exercice du droit de saisie

1. La saisie de tout navire au sujet duquel une créance maritime est alléguée peut être pratiquée si

a) la personne qui était propriétaire du navire au moment où la créance maritime est née est obligée à raison de cette créance et est propriétaire du navire au moment où la saisie est pratiquée; ou

b) l'affréteur en dévolution du navire au moment où la créance maritime est née est obligé à raison de cette créance et est affréteur en dévolution ou propriétaire du navire au moment où la saisie est pratiquée; ou

c) la créance repose sur une hypothèque, un "mortgage" ou un droit de même nature sur le navire; ou

d) la créance est relative à la propriété ou à la possession du navire; ou

e) il s'agit d'une créance sur le propriétaire, l'affréteur en dévolution, l'armateur gérant ou l'exploitant du navire, garantie par un privilège maritime qui est accordé ou applicable en vertu de la législation de l'État dans lequel la saisie est demandée.

2. Peut également être pratiquée la saisie de tout autre navire ou de tous autres navires qui, au moment où la saisie est pratiquée, est ou sont propriété de la personne qui est obligée à raison de la créance maritime et qui, au moment où la créance est née, était:

a) propriétaire du navire auquel la créance maritime se rapporte; ou

b) affréteur en dévolution, affréteur à temps ou affréteur au voyage de ce navire.

Cette disposition ne s'applique pas aux créances relatives à la propriété ou à la possession d'un navire.

3. Nonobstant les dispositions des paragraphes 1 et 2 du présent article, la saisie d'un navire qui n'est pas propriété d'une personne prétendument obligée à raison de la créance ne peut être autorisée que si, selon la loi de l'État où la saisie est demandée, un jugement rendu en vertu de cette créance peut être exécuté contre ce navire par une vente judiciaire ou forcée de ce navire.

Article 4
Mainlevée de la saisie

1. Un navire qui a été saisi doit être libéré lorsqu'une sûreté d'un montant suffisant et sous une forme satisfaisante a été constituée, sauf dans le cas

been arrested in respect of any of the maritime claims enumerated in article 1, paragraphs 1 (s) and (t). In such cases, the Court may permit the person in possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.

2. In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.

3. Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.

4. If a ship has been arrested in a non-party State and is not released although security in respect of that ship has been provided in a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.

5. If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:
(a) the claim for which the ship has been arrested, or
(b) the value of the ship,
whichever is the lower. Such release shall, however, not be ordered unless the security provided in the non-party State will actually be available to the claimant and will be freely transferable.

6. Where, pursuant to paragraph 1 of this article, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

où la saisie est pratiquée en raison des créances maritimes énumérées aux alinéas s) et t) du paragraphe 1 de l'article premier. En ce cas, le tribunal peut permettre l'exploitation du navire par la personne qui en a la possession, lorsque celle-ci aura constitué une sûreté d'un montant suffisant, ou réglé de toute autre façon la question de la gestion du navire pendant la durée de la saisie.

2. Si les parties intéressées ne parviennent pas à un accord sur l'importance et la forme de la sûreté, le tribunal en détermine la nature et le montant, qui ne peut excéder la valeur du navire saisi.

3. Aucune demande tendant à la libération du navire contre la constitution d'une sûreté ne peut être interprétée comme une reconnaissance de responsabilité ni comme une renonciation à toute défense ou tout droit de limiter la responsabilité.

4. Si un navire a été saisi dans un État non partie et n'est pas libéré malgré la constitution d'une sûreté concernant ce navire dans un État partie relativement à la même créance, la mainlevée de cette sûreté est autorisée par le tribunal de l'État partie, par ordonnance rendue sur requête.

5. Si, dans un État non partie, le navire est libéré contre la constitution d'une sûreté suffisante concernant ce navire, la mainlevée de toute sûreté constituée dans un État partie relativement à la même créance est autorisée par ordonnance si le montant total de la sûreté constituée dans les deux États dépasse:
a) soit le montant de la créance au titre de laquelle la saisie a été pratiquée;
b) soit la valeur du navire;
la moins élevée des deux devant prévaloir. Cette mainlevée n'est toutefois autorisée par ordonnance que si la sûreté constituée est effectivement disponible dans l'État non partie et librement transférable au profit du créancier.

6. Toute personne qui a constitué une sûreté en vertu des dispositions du paragraphe 1 du présent article peut, à tout moment, demander au tribunal de réduire, modifier ou annuler cette sûreté.

Article 5
Right of rearrest and multiple arrest

1. Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:
(a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or
(b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or

Article 5
Droit de nouvelle saisie et saisies multiples

1. Lorsque, dans un État, un navire a déjà été saisi et libéré ou qu'une sûreté a déjà été constituée pour garantir une créance maritime, ce navire ne peut ensuite faire l'objet d'aucune saisie fondée sur la même créance maritime, à moins que:
a) la nature ou le montant de la sûreté concernant ce navire déjà constituée en vertu de la même créance ne soit pas suffisant, à condition que le montant total des sûretés ne dépasse pas la valeur du navire; ou
b) la personne qui a déjà constitué la sûreté ne soit ou ne paraisse pas capable d'exécuter tout ou partie de ses obligations; ou

(c) the ship arrested or the security previously provided was released either:

(i) upon the application or with the consent of the claimant acting on reasonable grounds, or

(ii) because the claimant could not by taking reasonable steps prevent the release.

2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:

(a) the nature or amount of the security already provided in respect of the same claim is inadequate; or

(b) the provisions of paragraph 1 (b) or (c) of this article are applicable.

3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

Article 6
Protection of owners and demise charterers of arrested ships

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

(a) the arrest having been wrongful or unjustified; or

(b) excessive security having been demanded and provided.

2. The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

(a) the arrest having been wrongful or unjustified, or

(b) excessive security having been demanded and provided.

3. The liability, if any, of the claimant in accordance with paragraph 2 of this article shall be determined by application of the law of the State where the arrest was effected.

4. If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.

5. Where pursuant to paragraph 1 of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

c) la mainlevée de la saisie ou la libération de la sûreté ne soit intervenue:

i) soit à la demande ou avec le consentement du créancier agissant pour des motifs raisonnables,

ii) soit parce que le créancier n'a pu par des mesures raisonnables empêcher cette mainlevée ou cette libération.

2. Tout autre navire qui serait autrement susceptible d'être saisi en vertu de la même créance maritime ne peut être saisi à moins que:

a) la nature ou le montant de la sûreté déjà constituée en vertu de la même créance ne soit pas suffisant; ou

b) les dispositions du paragraphe 1 b) ou c) du présent article ne soient applicables.

3. La "mainlevée" aux fins du présent article exclut tout départ ou toute libération du navire de nature illégale.

Article 6
Protection des propriétaires et affréteurs en dévolution de navires saisis

1. Le tribunal peut, comme condition à l'autorisation de saisir un navire ou de maintenir une saisie déjà pratiquée, imposer au créancier saisissant ou ayant fait saisir le navire l'obligation de constituer une sûreté sous une forme, pour un montant et selon des conditions fixées par ce tribunal, à raison de toute perte causée par la saisie susceptible d'être subie par le défendeur et dans laquelle la responsabilité du créancier peut être prouvée, notamment mais non exclusivement, à raison de la perte ou du dommage éventuels subis par le défendeur par suite:

a) d'une saisie abusive ou injustifiée; ou

b) d'une sûreté excessive demandée et constituée.

2. Les tribunaux de l'État dans lequel une saisie a été pratiquée sont compétents pour déterminer l'étendue de la responsabilité éventuelle du créancier à raison de pertes ou dommages causés par la saisie d'un navire, notamment mais non exclusivement, de ceux qui seraient subis par suite:

a) d'une saisie abusive ou injustifiée; ou

b) d'une sûreté excessive demandée et constituée.

3. La responsabilité éventuelle du créancier, visée au paragraphe 2 du présent article, est déterminée par application de la loi de l'État où la saisie a été pratiquée.

4. Au cas où le litige est, conformément aux dispositions de l'article 7, soumis à l'examen au fond d'un tribunal d'un autre État ou d'un tribunal arbitral, la procédure relative à la responsabilité du créancier prévue au paragraphe 2 du présent article peut être suspendue dans l'attente de la décision au fond.

5. Toute personne qui a constitué une sûreté en vertu des dispositions du paragraphe 1 du présent article peut à tout moment demander au tribunal de réduire, modifier ou annuler cette sûreté.

Article 7
Jurisdiction on the merits of the case

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:
(a) does not have jurisdiction to determine the case upon its merits; or
(b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article,
such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.

4. If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this article then the ship arrested or the security provided shall, upon request, be ordered to be released.

5. If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:
(a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and
(b) such recognition is not against public policy (*ordre public*)

6. Nothing contained in the provisions of paragraph 5 of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

Article 8
Application

1. This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.

Article 7
Compétence sur le fond du litige

1. Les tribunaux de l'État dans lequel une saisie a été pratiquée ou une sûreté constituée pour obtenir la libération du navire sont compétents pour juger le litige au fond, à moins que les parties, de façon valable, ne conviennent ou ne soient convenues de soumettre le litige au tribunal d'un autre État se déclarant compétent, ou à l'arbitrage.

2. Nonobstant les dispositions du paragraphe 1 du présent article, les tribunaux de l'État dans lequel une saisie a été pratiquée, ou une sûreté constituée pour obtenir la libération du navire, peuvent décliner leur compétence si le droit de cet État le leur permet et si le tribunal d'un autre État se reconnaît compétent.

3. Lorsqu'un tribunal de l'État dans lequel une saisie a été pratiquée ou une sûreté constituée pour obtenir la libération du navire:
a) n'est pas compétent pour statuer au fond sur le litige; ou
b) a décliné sa compétence en vertu des dispositions du paragraphe 2 du présent article,
ce tribunal peut et, sur requête, doit fixer au créancier un délai pour engager la procédure au fond devant un tribunal compétent ou une juridiction arbitrale.

4. Si, au terme du délai fixé conformément au paragraphe 3 du présent article, la procédure au fond n'a pas été engagée, la mainlevée de la saisie ou de la sûreté constituée est, sur requête, autorisée par ordonnance.

5. Si la procédure est engagée avant le terme du délai fixé conformément au paragraphe 3 du présent article, ou si la procédure devant un tribunal compétent ou un tribunal arbitral d'un autre État est engagée en l'absence de fixation d'un délai, toute décision définitive prononcée à l'issue de cette procédure est reconnue et prend effet à l'égard du navire saisi ou de la sûreté constituée pour prévenir la saisie du navire ou obtenir sa libération, à condition que:
a) le défendeur ait été averti de cette procédure dans des délais raisonnables et mis en mesure de présenter sa défense; et
b) cette reconnaissance ne soit pas contraire à l'ordre public.

6. Aucune des dispositions du paragraphe 5 du présent article ne limite la portée d'un jugement ou d'une sentence arbitrale étrangers rendus selon la loi de l'État où la saisie du navire a été pratiquée ou une sûreté constituée pour en obtenir la libération.

Article 8
Application

1. La présente Convention est applicable à tout navire relevant de la juridiction d'un État partie, quel qu'il soit, et battant ou non pavillon d'un État partie.

2. This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

3. This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

4. This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

5. Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

6. Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

Article 9
Non-creation of maritime liens

Nothing in this Convention shall be construed as creating a maritime lien.

Article 10
Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following :
(a) ships which are not seagoing;
(b) ships not flying the flag of a State Party;
(c) claims under article 1, paragraph 1 (s).

2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

2. La présente Convention n'est pas applicable aux navires de guerre, navires de guerre auxiliaires et autres navires appartenant à un État ou exploités par lui et exclusivement affectés, jusqu'à nouvel ordre, à un service public non commercial.

3. La présente Convention ne porte atteinte à aucun des droits ou pouvoirs, dévolus par une convention internationale, une loi ou réglementation interne à un État ou à ses administrations, à un établissement public ou à une autorité portuaire, de retenir un navire ou d'en interdire le départ dans le ressort de leur juridiction.

4. La présente Convention ne porte pas atteinte au pouvoir d'un État ou tribunal de rendre des ordonnances applicables à la totalité du patrimoine d'un débiteur.

5. Aucune disposition de la présente Convention ne porte atteinte à l'application de conventions internationales ni d'aucune loi interne leur donnant effet, autorisant la limitation de responsabilité dans l'État où une saisie est pratiquée.

6. Aucune disposition de la présente Convention ne modifie ou ne concerne les textes de loi en vigueur dans les États parties relativement à la saisie d'un navire dans la juridiction de l'État dont il bat pavillon, obtenue par une personne ayant sa résidence habituelle ou son principal établissement dans cet État, ou par toute autre personne qui a acquis une créance de ladite personne par voie de subrogation, de cession, ou par tout autre moyen.

Article 9
Non-création de privilèges maritimes

Aucune disposition de la présente Convention ne peut être interprétée comme créant un privilège maritime.

Article 10
Réserves

1. Un État peut, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, ou à tout moment par la suite, se réserver le droit d'exclure du champ d'application de la présente Convention:
a) les bâtiments autres que les navires de mer;
b) les navires ne battant pas le pavillon d'un État partie;
c) les créances visées à l'alinéa s) du paragraphe 1 de l'article premier.

2. Un État qui est aussi partie à un traité sur la navigation intérieure, peut déclarer, au moment de la signature, de la ratification, de l'acceptation ou de l'approbation de la présente Convention ou de l'adhésion à celle-ci, que les dispositions de ce traité concernant la compétence des tribunaux et la reconnaissance et l'exécution de leurs décisions prévalent sur les dispositions de l'article 7 de la présente Convention.

Article 11
Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

Article 12
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:
(a) signature without reservation as to ratification, acceptance or approval; or
(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

Article 13
States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

Article 14
Entry into force

1. This Convention shall enter into force six months following the date on which 10 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for

Article 11
Dépositaire

La présente Convention est déposée auprès du Secrétaire général de l'Organisation des Nations Unies.

Article 12
Signature, ratification, acceptation, approbation et adhésion

1. La présente Convention est ouverte à la signature des États au Siège de l'Organisation des Nations Unies, à New York, du 1er septembre 1999 au 31 août 2000. Elle reste ensuite ouverte à l'adhésion.

2. Les États peuvent exprimer leur consentement à être liés par la présente Convention par:
a) signature sans réserve quant à la ratification, l'acceptation ou l'approbation; ou
b) signature sous réserve de ratification, d'acceptation ou d'approbation, suivie de ratification, d'acceptation ou d'approbation; ou
c) adhésion.

3. La ratification, l'acceptation, l'approbation ou l'adhésion s'effectuent par le dépôt d'un instrument à cet effet auprès du dépositaire.

Article 13
États ayant plus d'un régime juridique

1. S'il possède deux ou plusieurs unités territoriales dans lesquelles des régimes juridiques différents sont applicables pour ce qui est des matières traitées dans la présente Convention, un État peut, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, déclarer que la présente Convention s'applique à l'ensemble de ses unités territoriales ou seulement à une ou plusieurs d'entre elles, et il peut modifier cette déclaration en présentant une autre déclaration à tout moment.

2. La déclaration est notifiée au dépositaire et précise expressément les unités territoriales auxquelles s'applique la Convention.

3. Dans le cas d'un État partie qui possède deux ou plusieurs régimes juridiques concernant la saisie conservatoire des navires applicables dans différentes unités territoriales, les références dans la présente Convention au tribunal d'un État et à la loi ou au droit d'un État sont considérées comme renvoyant, respectivement, au tribunal et à la loi ou au droit de l'unité territoriale pertinente de cet État.

Article 14
Entrée en vigueur

1. La présente Convention entre en vigueur six mois après la date à laquelle 10 États ont exprimé leur consentement à être liés par elle.

2. Pour un État qui exprime son consentement à être lié par la présente Convention après que les

entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

Article 15
Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

Article 16
Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

Article 17
Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this twelfth day of March, one thousand nine hundred and ninety-nine.
IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

conditions de son entrée en vigueur ont été remplies, ce consentement prend effet trois mois après la date à laquelle il a été exprimé.

Article 15
Révision et amendement

1. Le Secrétaire général de l'Organisation des Nations Unies convoque une conférence des États parties pour réviser ou modifier la présente Convention, à la demande d'un tiers des États parties.

2. Tout consentement à être lié par la présente Convention exprimé après la date d'entrée en vigueur d'un amendement à la présente Convention est réputé s'appliquer à la Convention telle que modifiée.

Article 16
Dénonciation

1. La présente Convention peut être dénoncée par l'un quelconque des États parties à tout moment à compter de la date à laquelle elle entre en vigueur à l'égard de cet État.

2. La dénonciation s'effectue au moyen du dépôt d'un instrument de dénonciation auprès du dépositaire.

3. La dénonciation prend effet un an après la date à laquelle le dépositaire a reçu l'instrument de dénonciation ou à l'expiration de tout délai plus long énoncé dans cet instrument.

Article 17
Langues

La présente Convention est établie en un seul exemplaire original en langues anglaise, arabe, chinoise, espagnole, française et russe, chaque texte faisant également foi.

FAIT À Genève, le douze mars mil neuf cent quatre-vingt-dix-neuf.
EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leurs gouvernements respectifs, ont apposé leur signature à la présente Convention.